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Building a Structured Knowledge Base on Land Policies and regulatory Frameworks in Support of Responsible Land Administration

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Learning about Land Policies

Building a Structured Knowledge Base on Land Policies and Regulatory Frameworks
in support of Responsible Land Administration

Stig ENEMARK, Denmark

Key words: Land policies, Land administration, Learning material

SUMMARY

A national land policy is the set of aims and objectives set by governments for dealing with land issues. Land policy is part of the national policy on promoting objectives such as economic development, social justice and equity, and political stability. Land policies vary, but in most countries, they include poverty reduction, sustainable agriculture, sustainable settlement, economic development, and equity among various groups within the society.

Policy implementation depends on how access to land and land related opportunities is allocated. Governments therefore regulate land related activities, including holding rights to land, supporting the economic aspects of land, and controlling the use of land and its development. Administration systems surrounding these regulatory patterns facilitate the implementation of land policy in the broadest sense, and in well-organized systems, they deliver sensible land management and good governance. Responsible approaches and initiatives, that are socially acceptable, are needed to shape policy design and implementation, and their impact upon society should be assessed.

The paper draws from a GLTN project on building a structured knowledge base in support of responsible land administration. The project included six modules addressing various aspects responsible land administration. Module 6 on Land Policies and Regulatory Frameworks is presented in some details to explain about the issues addressed and the approach of facilitating the learning process. The module includes 5 lessons and provides essential and accessible knowledge about the following issues: (1) The nature of various land policies; (2) The global, regional and national drivers for developing such policies; (3) The components to be included in land policy formulation and land related regulations; (4) Examples of country specific land policies and regulatory frameworks; and (5) Enforcement of land policies through sustainable land administration systems and their regulatory and institutional frameworks.

The paper explains about the role and design of such a structured knowledge base and how it can be used for various kind of teaching and learning such as university curriculum, blended learning, in-service training, CPD activities and self-studies.

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Stig ENEMARK, Denmark

1. INTRODUCTION

Land-related problems are common in many countries around the world, and pose particularly difficult policy problems for governments. Existing policies and laws on land often pursue economic productivity at the expense of other equally important values, such as equity, sustainability, transparency and efficiency. In some countries, the ministry responsible for land focuses on delivering titles to the middle classes and to commercial concerns. They try to pursue business as usual, despite being bombarded by a range of land-related problems and crises. In other countries, the government is weak, and there is often limited capacity to handle land issues at the national level. In still more countries, conflict within the country or region prevents any systematic initiatives to solve the land problem (GLTN, 2012, chapter 10). Responsible approaches and initiatives, that are socially acceptable, are needed to shape policy design and implementation, and their impact upon society should be assessed.

The challenges facing the land sector are significant and complex, and implementation of responsible land administration principles requires great care. There are no quick solutions, and the effect and impact of land administration depends on many contextual issues in different cases. Effective solutions involve going deeper into the actual tenure forms in existence, with solutions building on what are already there and in response to particular historical, cultural, and legal context.

The basic principles of Responsible Land Administration represent a combination of the values embedded in the global agenda represented by the Sustainable development Goals (SDGs), the Voluntary Guidelines on the responsible Governance of tenure (VGGTs), The Human Rights Declaration (HRD), and the GLTN core values. These principles can be summarized as shown in Table 1.

<ul style="list-style-type: none">• Secure land rights for all• Non-discrimination• Equity and justice• Gender equity	<ul style="list-style-type: none">• Inclusive and participatory• Rule of law• Transparency• Accountability	<ul style="list-style-type: none">• Affordable• Systematic large scale / scalable• Sustainable
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Table 1. Principles of Responsible Land Governance.

Responsible Land Administration, this way, is a quality term or an ideal that may be difficult to achieve. The principles above seek to identify the values on which the term is build. Such values should be embedded in national policies addressing the land issues – they should explicitly shape the national land policies.

This paper draws from a GLTN project on building a structured knowledge base in support of responsible land administration, available at <https://elearning.glt.nu/>. The project includes six modules addressing various aspects responsible land administration, of which Module 6 is on Land Policies and Regulatory Frameworks. The paper presents an overview of this Module 6 and explains, in some details, about the issues addressed and the approach used for facilitating various kinds of learning modes such as university curriculum, blended learning, in-service training, CPD activities and self-studies.

To achieve this, the module is structured to enable the use in academic teaching of approximately 50 hours of study load (2 ECTS) at 3rd year university level where each lesson comprises about 3 hours of classroom teaching and about 7 hours of teacher directed self-study. Using this structure the module aims to provide insight and understanding through structured knowledge building based on references from key literature. This way, the module can support a whole range of different kind of learning activities and self-studies.

Module 6 on Land Policies and Regulatory frameworks includes five lessons and provides essential and accessible knowledge about the following issues:

1. Understanding the nature and importance of land policies and regulatory frameworks;
2. The global, regional and national drivers for developing such policies;
3. Exploring the components to be included in land policies and land related regulations;
4. Examples of country specific land policies and regulatory frameworks; and
5. Enforcement of land policies through sustainable land administration systems and their regulatory and institutional frameworks.

An overview of the full contents (76 pages) is provided in Annex 1.

2. LAND POLICY - WHAT IS IT AND WHY IS IT IMPORTANT?

A “policy” is an expression of political aims and objectives concerning a specific issue or area. It is a statement of intent, and is implemented as a procedure or protocol. A national land policy is the set of aims and objectives set by governments for dealing with land issues.

“Land policy is part of the national policy on promoting objectives such as economic development, social justice and equity, and political stability. Land policies vary, but in most countries, they include poverty reduction, sustainable agriculture, sustainable settlement, economic development, and equity among various groups within the society. (Williamson et. al., 2010, 117-118).

“Land policy consists of combination of socio-economic prescriptions that dictate how the land is to be used and how the benefits from the land are to be shared” (UNECE, 2005, 60). This definition recognizes that the land issue comprises both social, economic and legal measures to allocate benefits, not only in the sense of access to land as such, but also access to land related benefits.

“Land Policy is the rules governing access to and the distribution of one of the economy’s main assets” (Deininger, 2003, Executive Summary). This definition, similarly, addresses economic and social aspects of land related benefits.

Land policies are the foundation for dealing with the land issue. Land policy can be understood as the result of choices and actions of policymakers, who contemplate land use, public interests, and rights. Land policy is then a manifestation of a social contract with regard to land use (Davy, 2012, 31).

“Land Policies are seen of fundamental importance to sustainable growth, good governance, and the well-being of and the economic opportunities open to rural and urban dwellers – particularly the poor” (Deininger, 2003, Foreword). This World Bank policy research report rests on three principles that underpin the importance of land policy:

- “First, providing secure tenure to land can improve the welfare of the poor, in particular, by enhancing the asset base of those, such as women, whose land rights are often neglected. At the same time, it creates the incentives needed for investment, a key element underlying sustainable economic growth.
- Second, facilitating the exchange and distribution of land, whether as an asset or for current services, at low cost, through markets as well as through nonmarket channels, is central to expediting land access by productive but land-poor producers and, once the economic environment is right, the development of financial markets that rely on the use of land as collateral.
- Third, governments have a clear role to play in promoting and contributing to socially desirable land allocation and utilization. This is clearly illustrated by farm restructuring in the context of decollectivisation and land reform and post conflict land policy in economies with a highly unequal distribution of land ownership where land issues are often a key element of social strife. Appropriate incentives for sustainable land use are also required to avoid negative externalities and irreversible degradation of non-renewable natural and cultural resources.” (ibid, ix-x)

The World Bank Policy Research Report presents a strong argumentation for the need of sustainable land policies and secure land rights, e.g. in relation to economic growth, poverty reduction, good governance, efficient land markets, socially desirable land use, environmental sustainability, etc.

3. THE REGULATORY FRAMEWORK – WHAT IS IT?

The regulatory framework is the laws and legal provisions used as instruments to express and implement government policies and strategies within specific areas. Within the land sector, such regulations relate to controlling the rights in land, the valuation and taxation of land and property, the planning and control of land use and natural resources, and the process of land development. The regulatory framework for land is then the infrastructure of such regulations and institutional arrangements forming a land administration system.

The law may take different forms where there are various legal traditions, based around typically common law (Roman, Latin) and civil law (German, Anglo). Other legal traditions relate to Islamic, Jewish, Traditional and Asian law. Colonisation spread different legal systems (especially common and civil law) throughout the world, each of which approached land administration design in different ways (Williamson, et al., 2010, 58-59).

There are four main areas of the law that particularly affect the land administrator:

- The law of ‘real’ property that affects the types of tenure rights and dealings in land;
 - The laws on land reform such as the privatization of State-owned land, the restitution of former private land, and land consolidation;
 - The laws that govern the conduct of land administration such as the regulations that control the operation of the cadastre and land registration; the valuation system; the land use planning system; and land development through construction works, such as of buildings and infrastructure.
 - The laws that regulate roads, protection of the environment and management of natural resources, such as agricultural land, forests, water, minerals, etc.
 - Other areas of the law, such as those relating to bankruptcy, inheritance and matrimony, also affect real property and thus the work of the land administrator.
- (adapted from UNECE, 2005, 29).

These land laws and regulations are delegated to different levels of government and institutions and form the operational component for implementing national land policies within specific areas of operation as illustrated in figure 1 below.

4. WHAT IS THE ROLE OF LAND POLICY?

“All nations have to deal with the management of land. They have to deal with the four land administration functions of land tenure, land value, land use, and land development in some way or another. A country’s capacity may be advanced and combine all the activities in one conceptual framework supported by interactive land information systems. More likely, however, capacity will involve very fragmented and analogue approaches. Different countries will also put varying emphasis on each of the four functions, depending on their cultural bias and level of economic development.” (Williamson, et al. 2010, 118)

The Land Policy Framework establish the link between political aims and objectives, e.g. in relation to poverty reduction, food security, sustainability, etc., and the regulatory framework of operation as embedded in the land administration systems dealing with land tenure, land value, land use and land development. This regulatory framework is facilitated by inventories of land parcels / spatial units, land rights, land use, and natural resources combining the built and natural environment. This is illustrated in figure 1 below.

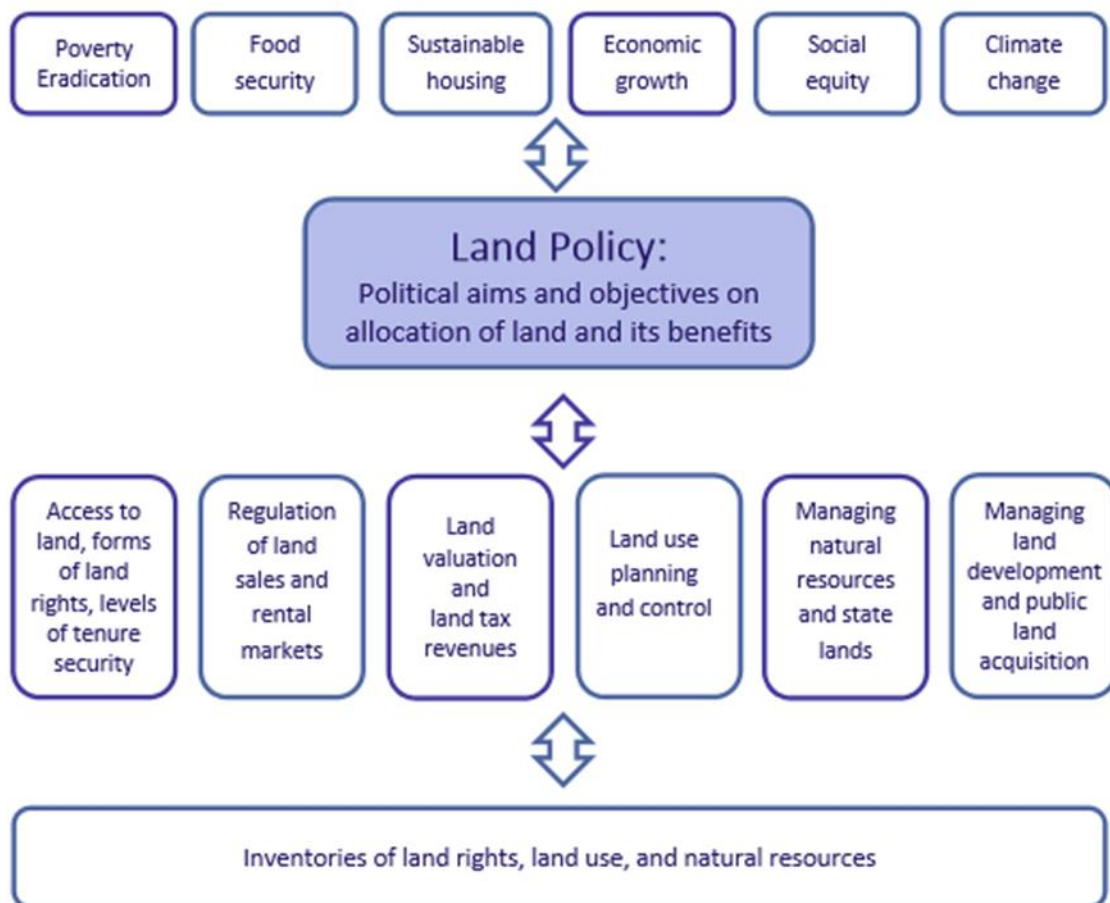


Figure 1. The Role of Land Policy (adapted from Molen, et al., 2008)

5. LAND GOVERNANCE – WHAT IS IT?

“Land governance is about the policies, processes and institutions by which land, property and natural resources are managed.” (FIG / WB, 2010, 10). This includes decisions on access to land; land rights; land use; land development. Land governance is about determining and implementing sustainable land policies.

Land governance and management covers all activities associated with the management of land and natural resources that are required to fulfil political and social objectives and achieve sustainable development. This relates specifically to the legal and institutional framework for the land sector. The operational component of the land management concept is the range of land administration functions that include the areas of land tenure, land value, land use, and land development. All of these are essential to ensure control and management of physical space and the economic and social outcomes emerging from it

“There is strong connection between land governance and land policies. Land policy is the foundation on which the systems in a country for land management, land administration, land-

use and development are built. Policy endorsed by a high authority should be based on principles of good governance focusing on efficiency, equity and accountability. The implications of weak governance from deficiencies in policy include tenure insecurity; encroachment and exclusion on access to land; informal modes of service delivery; limited land markets; increased administrative corruption and state capture, and increased land disputes. Functional ambiguity among institutions often equates to agencies acting unilaterally and out of touch with community expectations and desires” (Burns and Dalrymple, 2008, 7-8).

6. THE NATURE OF LAND POLICY FRAMEWORKS

“National land policy formulation is the most fundamental level of decision-making with respect to land. In this sense, it represents the ultimate land governance process. All major land governance issues should be discussed and debated, including access to land, tenure security, control of natural resources, women’s land rights, institutional roles and responsibilities, resolution of disputes, etc. All stakeholders, including civil society, should be involved in the identification of issues and potential solutions. The outcomes from this process are intended to have far-reaching impacts on who can use land, how and for what development objectives” (FAO, 2009, 27)

It should be recognized, though, that many countries do not have a comprehensive National Land Policy; rather, they have different policies for different types of land and other natural resources: urban, agriculture, forestry, water, etc. as shown in figure 3. This is found in many developed countries, with a long tradition for handling land as a key societal asset.

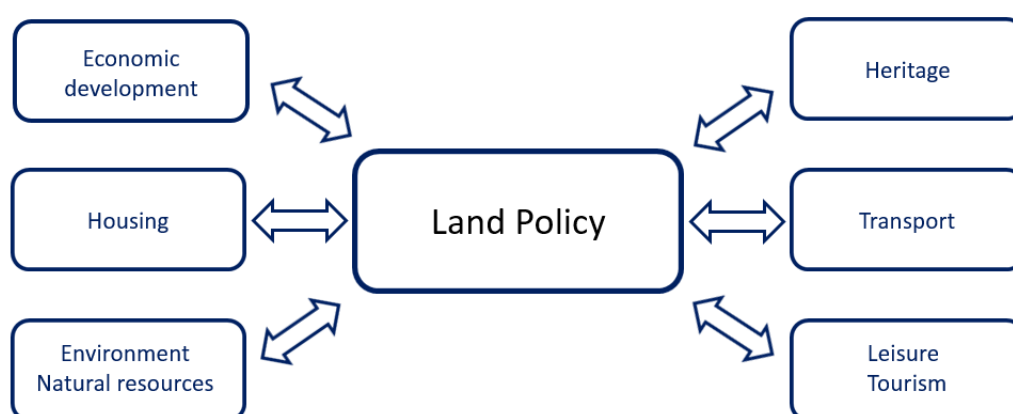
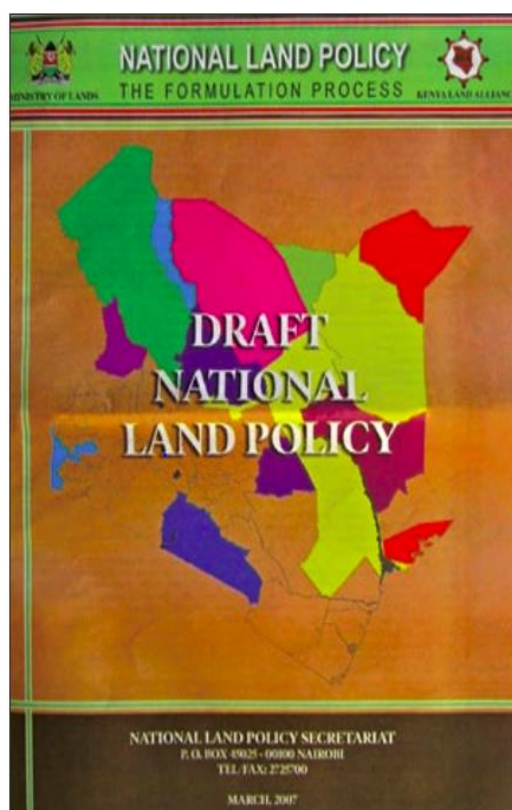


Figure 3. The Interrelationship between Land Policy and various sectoral policies

In contrast, most developing countries need to take a more holistic approach to address the land issue, in order to highlight the governmental and political economy dimensions that can be found in any decision-making process related to land. “A land policy aims to achieve certain objectives relating to the security and distribution of land rights, land use and land management, and access to land, including the forms of tenure under which it is held. It defines the principles and rules governing property rights over land and the natural resources it bears as well as the legal methods of access and use, and validation and transfer of these rights. It details the

conditions under which land use and development can take place, its administration, i.e. how the rules and procedures are defined and put into practice, the means by which these rights are ratified and administered, and how information about land holdings is managed. It also specifies the structures in charge of implementing legislation, land management and arbitration of conflicts.” (EU, 2004, 3).

“Land policy lies at the heart of economic and social life and environmental issues in all countries. The distribution of property rights between people has a tremendous impact on both equity and productivity. Similarly, land policy is also crucial for environmental sustainability as it can create incentives for sustainable land-use and environmental management. Land policy is contained in texts issued by governments, and is further developed through legislation, decrees, rules and regulations governing the operation of institutions established for the purposes of land administration, the management of land rights, and land use planning. To be effective, land policy must propose a practical and coherent set of rules, institutions, and tools, which are considered both legitimate and legal, and are appropriate for different context and interest groups” (ibid, 3). A comprehensive national land policy typically has to reflect the county context and the way the concept of land is understood within the culture. Figure 2 shows some typical and key areas of contents:



EXECUTIVE SUMMARY

1: INTRODUCTION.

- 1.1 The Problem
- 1.2 Vision of the Policy
- 1.3 Mission of the Policy
- 1.4 Objectives of the Policy
- 1.5 National Land Policy Formulation Process

2: THE LAND QUESTION

- 2.1 Country Background
- 2.2 The Origins of the Land Question
- 2.3 Contemporary Manifestations of the Land Question
- 2.4 Land Policy Issues

3: THE LAND POLICY FRAMEWORK

- 3.1 Philosophy of the National Land Policy
- 3.2 Constitutional Issues
- 3.3 Land Tenure Issues
- 3.4 Land Use Management Issues
- 3.5 Land Administration Issues
- 3.6 Land issues requiring Special intervention

4: INSTITUTIONAL FRAMEWORK

- 4.1 Structural Reform Principles
- 4.2 Policy Framework for Land Management Institutions
- 4.3 Support Agencies

5: LAND POLICY IMPLEMENTATION FRAMEWORK

- 5.1 Land Reform Transformation Unit
- 5.2 Capacity Building
- 5.3 Financing the Land reform programme

Figure 2. Left: The Kenya National Land Policy reaches the front page of the March 2007 special edition of the Daily Nation Newspaper (Nairobi) and thereby highlighting its importance. Right: The outline of contents of the Kenya National Land Policy.

7. CORE OBJECTIVES AND COMPONENTS OF NATIONAL LAND POLICIES

Sound land administration and management systems enable the implementation of land policies to fulfil political and social objectives and to achieve sustainable development. These systems deliver a range of benefits to society in terms of support of governance and the rule of law, alleviation of poverty, security of tenure, support for formal land markets, security for credit, support for land and property taxation, protection of state lands, management of land disputes, improvement of land-use planning and implementation, protection of the environment and management of natural resources.

Designing a National Land Policy is a critical and careful process. Overall, a National Land Policy is expected to contribute to the improvement of four key areas (adapted from Deininger, 2003, p. xvii-xxi, and Molen, et al., 2008, 3):

- **Economic growth, investments, access to credit, and productivity.** Secure land rights will facilitate economic growth because households and businesses are invited to invest based on improved credit opportunities based on well-defined land rights. Secure land rights also facilitates transfer of land and a flourishing rental market. Better land distribution promotes productivity and factor market functioning.
- **Poverty reduction, subsistence, and status.** Secure land rights will affect the households' ability to produce for their subsistence and generate a surplus. Their social and economic status is improved as well as their incentives to invest and use land in a sustainable manner. Their ability to self-insure and access financial market is improved. Also, secure land rights to one of the household's main assets is particularly important to women.
- **Governance, democracy, decentralisation, accountability and transparency.** Secure tenure will empower households' and individuals', giving them a greater "voice" and creating the basis for more democratic and participatory local development. This will also encourage decentralisation, opportunities of local tax revenues, and thereby increase the role and accountability of local government.
- **Sustainable land management.** Effective land use is encouraged when the government can take measures to bring land to higher productivity through better land market regulations, fair distribution of land, protection of the environment and natural resources, and incentives for land use that brings social welfare and encourages the start-up of small enterprises.

National land policies may vary in terms of purpose, components, and contextual structure. The overall purpose may be poverty reduction and economic development; security of tenure and gender equity; institutional and legal land reform; food security and agricultural/forestry policy; control of natural resources and environmental management; or, most likely, a combination of several of these purposes. However, no matter the overall purpose, most national land policies tend to include some core components aiming to establish an efficient and effective land administration system serving the need of the specific country and reflecting the national culture, history and geography. These core components of a National land Policy normally include:

- **Country context, problems, vision, goals and objectives.** This component of the policy will set the scene of the specific country and its land related history and problems. In most developing countries, land policies have been strongly influenced by their colonial legacy. Following state interventions have, in many cases, led to economic inefficiencies, ineffective bureaucracies, social injustice and increased poverty (EU, 2004, p. 3). To address these land related problems an overall vision should be presented followed by a number of more specific objectives and their priorities.
- **Land tenure types and security.** This important component is about developing the land tenure framework by identifying the categories of land tenure to be recognized (including customary tenure), and the level of tenure security to be provided. This also includes regulations on access to land for women, children and other vulnerable groups, and foreign citizens.
- **Land registration, valuation and taxation.** This is about building the land registration system, including regulations for surveying and mapping, and legal requirements for adjudication and registration of land rights, including resolution of land disputes. This component may also include principles for land information management and accessibility, and the building a National Spatial Data Infrastructure. The role of land valuation and taxation should be made explicit at national as well as local level.
- **Land use planning, land use control and land development.** This component should facilitate land use regulation and land development to enhance economic productivity and competitiveness for wealth creation and overall socio-economic development. A framework for land use planning should ensure that land is planned, use and managed for the benefit of present as well as future generations. Some countries prepare a National Plan for land use and development that supports implementation of the overall National Land Policy.
- **Environmental and natural resource management.** A framework for sustainable land management is necessary to ensure that natural resources are optimally and sustainably managed. Land use practices shall conform with principles of sound environmental management, including protection of water resources, forests and wetlands, and biodiversity. Climate change challenges should be addressed through relevant measures of mitigation and adaptation.
- **Institutional arrangements and mandates.** This component should include allocation of clear responsibilities and mandates for land administration and management at national, regional and local levels. A harmonised and integrated institutional framework should be established to facilitate efficient use, appropriate stewardship and effective management of land based natural resources.
- **Road map for implementation.** This is important to ensure political commitment and engagement of all relevant stakeholders from the public as well as the private sector. This component should include a cost/benefit analysis associated with implementing the National Land Policy.

These components presented above are further unfolded in lesson 6.4 (see Annex 1) using the National Land Policy of Uganda as the case study.

8. THE LAND MANAGEMENT PARADIGM

The key concepts of land policy, land governance, regulatory frameworks and their interrelation is also reflected in the land management paradigm. Within the country context, land management activities may be described by three components: land policies, land information infrastructures and land administration functions that support sustainable development, see figure 4.

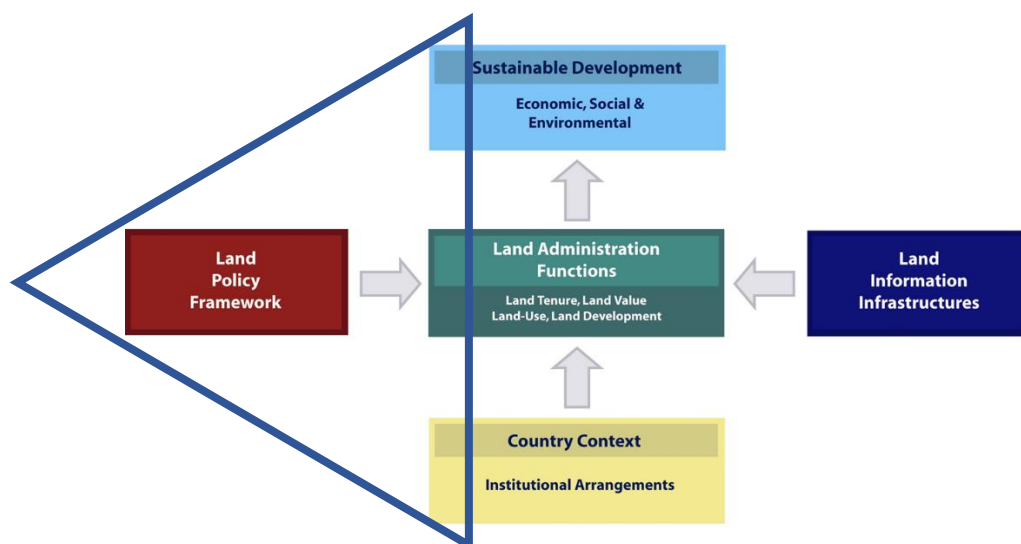
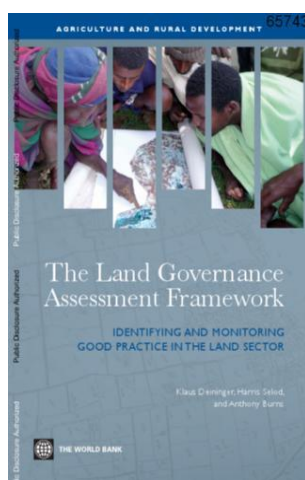


Figure 3. The land management paradigm, (Enemark, 2005; Williamson, et al., 2010, 117). The land policy component, as discussed in this module, is highlighted.

9. MONITORING AND EVALUATION

Any land policy initiative needs to be accompanied by a road map for implementation and an effective monitoring and evaluation framework to ensure that the goals and objectives are achieved or accordingly revised. A number of tools are available as described below.



The Land Governance Assessment Framework (LGAF) provides a holistic diagnostic review of the country or regional level that can inform policy dialogue in a clear and structured manner and identify weaknesses for improvement. This quick and innovative tool to monitor land governance is built around five main areas for policy intervention: (i) Legal and institutional framework including land rights recognition and enforcement; (ii) Land use planning, land management, and taxation; (iii) Management of public land; (iv) Public provision of land information; and (v) Dispute resolution and conflict management. The LGAF helps policymakers and other stakeholders to make sense of the technical levels of the land sector, benchmark governance, prioritize reforms in the land sector and identify areas that require further attention (World Bank, 2012, 1-2).

The Quest for Capacity

“A country’s capacity to establish, maintain and sustain land administration systems varies throughout the world. In some developed countries the capacity is well established and enables maintenance and further innovation of advanced interactive land information systems. In most developing countries, however, the capacity is very sporadic in terms of both institutions and personnel.

When building land administration systems in developing countries the quest for capacity development is fundamental. “Don’t start what you can’t sustain” - this simple phrase indicates that measures for capacity development must be established up front when starting a project on building sustainable land administration systems. The biggest challenge is often to ensure effective and efficient management of the systems once they are established and the donors have left the country.

Capacity is the power of something – a system, an organization or a person to perform and produce properly. Capacity development is not only about human resources and skills – it is just as well about building sustainable and trustable institutions for running the systems. Capacity development must be seen in a wider context of providing the ability of organisations and individuals to perform functions effectively, efficiently and sustainably. This includes the requirement to address capacity needs also at institutional and even more broadly at societal levels. Capacity development does not imply that there is no capacity in existence; it also includes retaining and strengthening existing capacities of people and institutions to perform their tasks and deliver services.

Measures of education and training are of course important at all levels from university degrees to short term programmes for training land clerks. This should ensure that there is a sustainable long-term capacity of educated and trained personnel available within the public as well as the private sector for operating the system. This also includes retaining and strengthening existing capacities of people and institutions to perform their tasks and deliver services.

Universities have a fundamental role in educating land professionals, but they should also undertake research and capacity development through interacting with government and society to develop adequate solutions to the core land issues. In some developing regions, such as Francophone Africa, this role of the universities is not well understood and should be improved e.g. by establishing regional centres of capacity development.

There is a need to focus on pro-poor land administration approaches for providing more flexible and fit-for-purpose solutions to building sustainable systems for security of tenure and effective management of the use of land. The scale of this task is huge given that most developing countries have a cadastral coverage of less than 30 per cent that is based on systems established in colonial times and serving mainly the elite. The quest for capacity in land administration is a fundamental issue for implementing sustainable land administration systems and, more generally, for meeting the overall global agenda in terms of economic growth, social equity and environmental sustainability”

Stig Enemark, GIM International, April 2014

CONCLUDING REMARKS

While the importance of land tenure and access to land for agricultural production and for shelter and housing has long been clear, recent research goes beyond this recognition by emphasizing the significance of secure property rights over land as a precondition for sustainable pro-poor economic growth. This perspective is based on several considerations:

- *Investment climate.* Non-transparent, corrupt, or inefficient systems of land administration and allocation add substantial costs to the efforts of small entrepreneurs to transform good ideas into viable enterprises.
- *Credit market access.* Well-functioning land institutions and markets, and the opportunities they create for using easily transferable land titles as collateral, can help reduce the cost of acquiring credit, thus contributing to the development of enterprises and financial systems.
- *Local government revenues.* Greater demand for land, together with public investment in roads and other infrastructure, tends to boost land values. .
- *Accountability and transparency.* In most developing countries, more than half the wealth of households is in land and real estate.
- *Social peace.* The importance of land for economic growth does not reduce its relevance for poverty reduction. Even access to small plots of land can improve household welfare and act as a safety net.

(Adapted from Deininger, 2004, 1-2).

The GLTN publication on “Handling Land” provides some guidance on enabling land policy processes (GLTN / UN-Habitat, 2012, Chapter 10). It is stated ...“A lack of adequate frameworks for fiscal management of land and land based resources contributes to poor planning and land use, speculation, rapidly growing informal settlements, a lack of services and infrastructure, and a loss of land-based revenue for the government. These in turn lead to food shortages, health problems, urban planning challenges, and land disputes between individuals and groups, between citizens and the state, and between countries” (GLTN / UN-Habitat, 2012, 115).

The only sustainable way to address these issues is through development of comprehensive, integrated land policies and the connected institutional, legal and regulatory frameworks.

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BIOGRAPHICAL NOTES



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Annex 1. Module 6. Land Policy and Regulatory Frameworks

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